



Walker Digital Enters the Game: Recent Trend of Patent Infringement Suits Against Activision, Blizzard, Microsoft, Electronic Arts and other Video Game Companies

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Over the last few months, Walker Digital, a patent holding company formed by Priceline.com founder Jay Walker, has filed infringement suits against over 100 companies, particularly targeting the video game industry. Given the number of suits, the breadth of the asserted claims and Walker Digital's purported resources, these lawsuits are likely to entangle others in the gaming industry.

In January, 2011, Walker Digital filed its first suit in federal court in Delaware against Activision and Blizzard (Call of Duty, DJ Hero 2, World of Warcraft) and Zynga (Farmville), alleging infringement of U.S. Patent No. 6,425,828 ("the '828 Patent"), regarding a method for conducting a networked electronic tournament for multiple players and storing player information. While games developed by these companies require individual player accounts, they are not traditional "tournament" games.

A few months later, Walker Digital filed another lawsuit in Delaware asserting the '828 Patent, as well as a related patent, U.S. Patent No. 6,224,486 ("the '486 Patent"), targeting a number of other gaming developers and publishers, including Electronic Arts (Madden, Medal of Honor), Microsoft (Halo, Gears of War), Rockstar (Red Dead Redemption), and Ubisoft (Assassin's Creed).

In these complaints, Walker Digital alleges that the defendants have used the patented technology for tournament games to "exchange information with a central computer to influence game play, and also store certain information that is available for use in subsequent tournament play." The patents' specifications reveal that they are broadly directed at methods and devices for conducting multiple tournaments wherein player information is collected and stored from one tournament to the next. Ostensibly, this would seem to reach many games played online.

In May 2011, Walker Digital filed yet another lawsuit in Delaware, this time alleging that a number of gaming companies, including Cryptic (Star Trek Online), Electronic Arts, and Zynga, had infringed its U.S. Patent No. 6,527,638 ("the '638 Patent"), directed at a "Secure Improved Remote Gaming System." According to the May complaint, the '638 Patent describes a means whereby users obtain gaming credits, such as from prepaid cards, rather than from some form of direct payment. The complaint specifically alleges infringement of, at least, claim 11 of the '638 Patent, which recites a method for a device to receive credit by means of an "encoded credit value code" provided by the player and decoded by a gaming device, thereby enabling the player to play a game. The asserted claims of this patent are also broad, and could read on any of a number of games incorporating prepaid credit.

In an April press release, Walker Digital's CEO indicated that the lawsuits were filed in response to the defendant companies' unwillingness to take licenses under the asserted patents. Whether the defendants' games in fact "depend on" the patents, as Walker Digital believes, is uncertain.

Further, there are early indications of prior art that could be used to challenge the validity and scope of these patents.

Nevertheless, Walker Digital appears resolute as it continues to target the gaming industry. Gaming companies should take note, monitor the status of the Walker Digital suits, and consider proactive measures such as Declaratory Judgment actions, to preempt the next wave of lawsuits.

If you have any questions about the information in this alert, please contact Robert Van Arnam, 919.981.4055 or rvanarnam@williamsmullen.com

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